LEGAL RESEARCH SKILLS AT OTAGO: INTRO

RESEARCH STRATEGY

Legal research is circular and iterative.

It is essential before you begin your research to define the task in front of you. What authorities do you need in order to carry out the task? And how do you find them?

Here is a broad outline of the legal research process.¹

WHAT DO I NEED TO LOOK FOR?

The goal of any legal research is to identify those authorities that are best able to solve a legal task: the most relevant and authoritative authorities. This means that your research must be focused on the particular task. What is the issue you are trying to resolve, or what is the question you are trying to answer? It is easy to get side-tracked when doing research. The biggest mistake you can make is to research aimlessly without a clear idea of what it is you are seeking to find.

HOW DO I CONDUCT FOCUSED RESEARCH FOR AN OPINION IF I DO NOT KNOW YET WHAT THE REAL ISSUE IS?

This is why legal research is so difficult. It is an iterative process: you have to go back and forth between the sources and the task (or, in the case of an opinion, the problem). You have to adapt your understanding of the task to your research, and vice versa. This takes time and effort, and you will amass a great deal of information.

FOLLOW VARIOUS LEADS AND IDENTIFY MANY DIFFERENT SOURCES.

Sometimes these sources will turn out to be irrelevant. This is a natural by-product of effective legal research. So do not feel disheartened if you end up discarding most of your research, and do not succumb to the temptation of including irrelevant sources in your assignment to prove that you have “done the work”. Instead, select carefully the few sources that you consider to be relevant.

You also have to ensure that your research is comprehensive. For example, if you are writing an opinion, you need to identify all of the authorities that will allow you to provide a well-reasoned legal opinion. If your research has serious gaps, you will not be able to state and apply the law correctly. You may not even be able to identify all of the contentious issues.

Your research strategy will necessarily depend on the task at hand, and on the amount of familiarity you already have with the particular area of law. But you should always take time to consider and define the task before you begin your research.

EVALUATE EVALUATE EVALUATE

Is it good law, is the jurisdiction appropriate, is it the best authority?

1. Adapted from the Faculty of Law Research and Writing Guide 2020.
You will always be starting with a certain amount of information, even if it is an area of law you are not familiar with. You will have some initial “clues”—a key case, a statute, a particular legal subject, the facts of a problem, or perhaps a key word or phrase.

If you have already identified a key authority, you may want to start with that authority. Imagine you have been asked to advise a client on a problem relating to charities law. You are aware that the law relating to charities is largely contained in the Charities Act 2005. So a good way to start your research would be to find and read the Charities Act 2005.

Alternatively, you may want to start with a secondary source such as an encyclopaedia or textbook—particularly if you are unfamiliar with the relevant area of law. The material may not be exhaustive or completely up to date. However, it will probably lead you to some relevant authorities, or provide good keywords and concepts to extend and develop your search.

Subscription databases such as Westlaw, Lexis and CCH will join the dots for you in ways that no freely available website can do. Start with what you have got, e.g. the Statute, and the databases will lead you to cases citing the statute, along with commentary and journal articles explaining how the statute is applied.

Read on, to learn how to manage your research process and get the best out of these databases.
DESCRIBE YOUR TOPIC (AND CHECK JURISDICTION)
Take time to consider and define the task before you begin your research.

EXAMPLE:
“The cancellation provisions in the Contract and Commercial Law Act 2017 (Part 2, Subpart 3) which were originally enacted in the Contractual Remedies Act 1979 were intended to clarify when a party may cancel a contract in New Zealand and the relief the courts may grant when a contract is cancelled. In your opinion, are there any aspects of the Act that have been misapplied by the courts or where additional requirements on cancellation have been imposed? Are these justifiable?”

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Each column represents synonyms, or broader or narrow terms within the same subject. The 4th column is only relevant if you are searching for NZ content in an international law database such as Lexis.com or Westlaw. The 5th column is only relevant if you are using a search engine or database that contains content beyond law, for example, Library Search | Ketu.

The concepts represent all the elements needed for your searching to achieve the most relevant results. You might only think up three concepts and their synonyms — or you might need ten concepts, (although that would be a bit extreme!). Just do whatever it takes, to cover all angles.

WHERE SHOULD I GO NEXT?
Use the references (or footnotes) to lead you to related cases, legislation or commentary, as you see fit. Typically, from a specific piece of legislation you can quickly identify related cases and journal articles, and from a specific case you can easily trace journal articles as well as subsequent cases in which the earlier case is considered.

As you progress through your research, your research needs to remain focused on the particular task and adapt to your growing understanding of the law. Be ready to verify or correct your “clue”, or to try a different clue altogether. Evaluate the authorities that you find for relevance and authority to make sure you are going in the right direction.

2. LAWS202 exam question 2013
WHEN DO I STOP SEARCHING?

At some point you will have to stop searching, but it can be difficult to know whether you have located all relevant authorities. Try to triangulate your search by approaching it from different angles. For example, use alternative indexes and different databases to double check. When no further material turns up, it may be time to stop. Always make sure that your research is up to date.

KEEPING TRACK OF IT ALL

Recording your research in a format such as a research trail is a good strategy. A thorough record of your research enables you to return to useful sources later on. It also serves as a reminder of all of the sources you have already checked.

There is no fixed format for a research trail. One possible format is included here by way of example. It allows you to track the leads you have followed in the course of your research, particularly starting points and where they have led. It also allows you to “zig zag” back and forth.

WHERE DO I ACTUALLY GO, TO FIND THE RESEARCH?

The Law Subject guide is a portal to all the sources you need to perform effective online searches.
THE FINAL WORD: LEGAL PUBLISHING, ESPECIALLY OF CASE LAW.

The NZ system goes something like this.

Assuming there is a written judgment, the first version of it is called the unreported judgment, an A-4 document written by the judge (of course) and produced by the court.

If the case subsequently gets reported (i.e. published in a series) this means:

1. that it is legally significant, meaning that it charts new territory and/or changes existing precedents. By implication, judgments which remain unreported involve relatively simple application of the known law to the facts.

2. that it has some added-value features that aren’t in the unreported judgment e.g. headnotes, indexes etc.

3. that publishers are trying to make money by selling it to you.

There are 3 key publishers of NZ law.

Knowing who publishes what will SAVE TIME in 2 ways:

1. Decoding a law report abbreviation, e.g. NZLR
   - Look at the abbreviations, and the location of the ‘NZ’.
   - NZXX = LexisNexis
   - XXXN = Brokers
   - XXXC = CCH

2. Matching a print publisher with their database partner
   - Lexis / LexisNexis / Lexis Advance / Butterworths / Mathew Bender
   - Brokers / WestlawNZ / Westlaw / Wests / Thomson Reuters / Sweet & Maxwell [UK] / Law Book Co [Aus]
   - Wolters Kluwer / CCH / CCH Intellecconnect

These publishers are in competition with each other so often do much the same thing. For example, Butterworths publish New Zealand Family Law Reports and Brokers publish Family Reports of New Zealand, and if their legal editors have the same sense of what constitutes a legally significant case, then a lot of cases will appear in both series.

Most legal publishers also publish commentary. Again, they will have roughly comparable content, just different editorial style. Often the same content is packaged for different markets, as a textbook, and also an online version. For example, Adams on criminal law.

One more point about legal publishing. There is a huge amount of full-text material (including legislation and case law) available free online. It is not published by commercial publishers, so it may not be so well-groomed, but it is free and very useful. NZLII and the other Legal Information Institute (-LII) databases are good examples of this kind of publishing.